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and Decisions

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This issue contains

T.D. 78–293 through 78–300
C.A.D. 1211
C.D. 4759 and 4760
C.R.D 78–13
Erratums

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 78–293)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued June 10, 1976, to July 26, 1978, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed, for each drawback rate or amendment approved under section 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the effective dates of exportation, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA–1–09)

August 15, 1978.

DONALD W. LEWIS,
(For Leonard Lehman, Assistant
Commissioner, Regulations and Rulings).

(A) Company: Adams Packing Association, Inc.
Articles: Frozen concentrated orange juice, canned single-strength orange juice, chilled single-strength orange juice, blended citrus juices.
Merchandise: Orange juice for manufacturing, frozen concentrated orange juice, concentrated orange juice for manufacturing.
Factory: Auburndale, Fla.
Statement signed: May 26, 1978.
Basis of claim: Appearing in.
Effective date: June 1, 1978.
Rate forwarded to Regional Commissioner of Customs: Miami, June 27, 1978.

(B) Company: Cabot Corp.
Articles: Anodes, bars, cathodes, ingots, rods, sheet, shot, slabs, strip, wire, plates, powder, electrodes, vessels, heat exchangers, pipe, tubing, fittings, nuts, bolts, rounds, and discs.
Merchandise: Chromium metal, chromium carbon metal, tungsten powder, tungsten scrap, tungsten carbide scrap, aluminum, titanium, titanium sponge, silicon, tantalum, nickel-tantalum alloy, lathanum, lathanum oxide, yttrium, yttrium oxide, and tungsten ore.
Factories: Kokomo, Ind.; Norwalk, Calif.; Bethel, Conn.; Arcadia, La.; and Santa Fe Springs, Calif.
Statement signed: February 17, 1977.
Basis of claim: Appearing in.
Effective date: July 6, 1973.
Amendment issued by Regional Commissioner of Customs: Boston, March 21, 1977.
Amends: T.D. 75–139–B, as amended, to cover Arcadia, La.; and Santa Fe Springs, Calif., factories.

(C) Company: The Coca-Cola Co.
Articles: Mr. Pibb sirup, Sprite sirup, Santiba sirups, Simba sirup, and Fanta sirups.
Merchandise: Hard refined sugar.
Factories: Various factories.
Statement signed: August 12, 1976.
Basis of claim: Used in.
Effective date: As listed in the company's statement.
Amendment issued by Regional Commissioner of Customs: Miami, December 20, 1976.
Amends: T.D. 53992–J, as amended, to cover additional articles and factories.

(D) Company: The Coca-Cola Bottling Co. of Baltimore.
Articles: Coca-Cola and other soft drinks.
Merchandise: Hard refined sugar.
Factory: Baltimore, Md.
Statement signed: November 28, 1977.
Basis of claim: Appearing in.
Effective date: February 1, 1977.
Rate forwarded to Regional Commissioners of Customs: San Francisco; New York; Miami, July 12, 1978.

(E) Company: The Coca-Cola Bottling Co. of California.
Articles: Coca-Cola and other soft drinks.
Merchandise: Hard refined sugar.
Factories: Oakland and San Leandro, Calif.
Statement signed: November 28, 1977.
Basis of claim: Appearing in.
Effective date: February 1, 1977.
Rate forwarded to Regional Commissioners of Customs: San Francisco; New York; Miami, July 12, 1978.

(F) Company: Copperweld Corp.
Articles: Copper wire, among other things; and copper-covered steel rod, wire, and strand, among other things.
Merchandise: Copper wire rod, and electrolytic-refined copper, respectively.
Factory: Glassport, Pa.
Statement signed: June 2, 1976.
Basis of claim: Appearing in.
Effective date: April 27, 1973.
Rate issued by Regional Commissioner of Customs: Baltimore, June 10, 1976.
Amends: T.D. 48406(J) as amended, and, T.D. 56434(K), as amended to cover change in name from Copperweld Steel Co. to Copperweld Corp.

(G) Company: The Dow Chemical Co.
Articles: 1,2,3-trichloropropane.
Merchandise: Crude 1,2,3-trichloropropane.
Factories: Freeport, Tex.; Plaquemine, La.
Statement signed: April 28, 1977.
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation.
Effective date: February 12, 1976.
Rate forwarded to Regional Commissioner of Customs: Chicago, June 16, 1978.
Revokes: T.D. 77–135–J, superseded.

(H) Company: E. I. du Pont de Nemours & Co.
Articles: Methomyl technical, Lannate Methomyl insecticide, and Lannate 90 W insecticide.
Merchandise: Acetaldoxime and hydroxylamine sulfate.

Factories: Houston, Tex.; Linden, N.J.
Statement signed: June 1, 1978.
Basis of claim: Appearing in.
Effective date: August 26, 1975.
Rate forwarded to Regional Commissioner of Customs: Baltimore, July 14, 1978.

(I) Company: E. I. du Pont de Nemours & Co.
Articles: Polyester film, coated or uncoated, slit or unslit.
Merchandise: Unslit and/or preslit, semifinished polyester film.
Factories: Circleville, Ohio; Florence, S.C.; Richmond, Va.
Statement signed: December 14, 1977.
Basis of claim: Appearing in.
Effective date: May 18, 1976.
Rate forwarded to Regional Commissioner of Customs: Baltimore, June 19, 1978.
Revokes: T.D. 77–192–J, superseded.

(J) Company: Eastman Kodak Co.
Articles: Deodorizer distillate in oil form (waste material obtained from distillation of vegetable oils).
Merchandise: Vitamin "E"; methyl esters; vegetable sterol concentrate.
Factories: Rochester, N.Y.; Kingsport, Tenn.
Statement signed: November 17, 1977.
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation.
Effective data: September 28, 1973.
Rate forwarded to Regional Commissioner of Customs: Baltimore, July 12, 1978.

(K) Company: The Empire Plow Co.
Articles: Agricultural implement replacement tillage tool parts.
Merchandise: Steel.
Factory: Cleveland, Ohio.
Statement signed: May 24, 1978.
Basis of claim: Used in, less valuable waste.
Effective date: May 15, 1978.
Rate forwarded to Regional Commissioner of Customs: Chicago, July 10, 1978.

(L) Company: Esco Foods, Inc.
Articles: Fountain toppings and sirups; ice cream mixes; ice milk mixes.
Merchandise: Hard refined sugar; liquid refined sugar; invert sugar solids of known sucrose content.
Factory: San Francisco, Calif.
Statement signed: July 7, 1978.
Basis of claim: Appearing in.
Effective date: June 23, 1978.
Rate forwarded to Regional Commissioner of Customs: San Francisco, July 26, 1978.

(M) Company: The Florsheim Shoe Co.
Articles: Shoes, among other things.
Merchandise: Finished upper leather (kid) and kid lining leather, among other things.
Factories: Chicago, Anna, and Olney, Ill.; Cape Girardeau, Poplar Bluff, Kirksville, Herman, Chaffee, and West Plains, Mo.; Paducah, Ky.; and Manati, PR.
Statement signed: January 3, 1977.
Basis of claim: Used in, less valuable waste.
Effective dates: November 6, 1974 (Olney, Ill.); January 14, 1976 (West Plains, Mo.); March 29, 1976 (Manati, P.R.); and August 27, 1976 (Chaffee, Mo.).
Amendment issued by Regional Commissioner of Customs: Chicago, February 8, 1977.
Amends: T.D. 54672–E, as amended, to cover Olney, Ill.; Chaffee and West Plains, Mo.; and Manati, P.R., factories.

(N) Company: The B. F. Goodrich Co.
Articles: Polyurethane resins and compounds.
Merchandise: Adipic acid.
Factory: Avon Lake, Ohio.
Statement signed: May 22, 1978.
Basis of claim: Appearing in.
Effective date: January 1, 1978.
Rate forwarded to Regional Commissioner of Customs: Baltimore, July 5, 1978.

(O) Company: Graetz Manufacturing Inc.
Articles: Reducing assemblies and parts thereof, and flites (chain links).

Merchandise: Steel plate, angles, and bar flats.
Factory: Pound, Wis.
Statement signed: April 21, 1978.
Basis of claim: Appearing in.
Effective date: October 7, 1971.
Rate forwarded to Regional Commissioners of Customs: New York; Chicago, June 13, 1978.
Revokes: T.D. 78–229–K, superseded.

(P) Company: Honeywell Inc.
Articles: Series 700 mini computer systems (model 716).
Merchandise: Fans.
Factory: Brighton, Mass.
Statement signed: May 8, 1978.
Basis of claim: Appearing in.
Effective date: May 1, 1977.
Rate forwarded to Regional Commissioner of Customs: Chicago, June 26, 1978.

(Q) Company: Lawter Chemicals, Inc.
Articles: Flourescent pigments, paints, and silk screen inks.
Merchandise: Rhodamine 6GDN (basic red), rhodamine BX (basic violet), ortho-paratoluene, sulphonamide, benzoquanamine, azosol brilliant yellow 6GF, and brilliant yellow 6G base.
Factory: Chicago, Il.
Statement signed: September 21, 1976.
Basis of claim: Appearing in.
Effective date: July 1, 1971.
Amendment issued by Regional Commissioner of Customs: Chicago, February 2, 1977.
Amends: T.D. 67–288–L to cover a change in location of the offices of the company only from Chicago to Northbrook, Ill.

(R) Company: Nashua Corp.
Articles: Thermosensitive labels.
Merchandise: Dicyclohexyl phthalate.
Factories: Nashua and Merimack, N.H.
Statement signed: May 11, 1978.
Basis of claim: Appearing in.
Effective date: January 1, 1976.
Rate forwarded to Regional Commissioner of Customs: Boston, June 22, 1978.

(S) Company: Olin Corp.
Articles: Calcium hypochlorite (HTH).
Merchandise: Causic soda.
Factories: Niagara Falls, N.Y.; Charleston, Tenn.
Statement signed: May 15, 1978.
Basis of claim: Used in.
Effective date: March 1, 1977.
Rate forwarded to Regional Commissioner of Customs: New York, June 15, 1978.

(T) Company: Owens-Corning Fiberglas Corp.
Articles: Glass-forming machinery parts (bushings, crucibles, and tip sections).
Merchandise: J-alloy ingots.
Factories: Newark, Ohio; Anderson, S.C.
Statement signed: June 19, 1978.
Basis of claim: Appearing in.
Effective date: September 20, 1977.
Rate forwarded to Regional Commissioner of Customs: New York, July 21, 1978.

(U) Company: Pacific Coca-Cola Bottling Co.
Articles: Coca-Cola and other soft drinks.
Merchandise: Hard refined sugar.
Factories: Bellevue, Wash.; Portland, Oreg.
Statement signed: November 28, 1977.
Basis of claim: Appearing in.
Effective date: February 1, 1977.
Rate forwarded to Regional Commissioners of Customs: San Francisco; New York; Miami, July 12, 1978.

(V) Company: Petro-Tex Chemical Corp.
Articles: Butadiene; butene 1; butene 2; isobutylene; triisobutylene; diisobutylene; normal butane; iso butane; polymer; pentanes/pentenes; fuel gas; heavy ends.
Merchandise: Crude butadiene; butane butylene; butylene concentrate.
Factory: Houston, Tex.
Statement signed: March 16, 1978.
Basis of claim: As provided in the drawback rate contained in section 22.6(g–1) of the Customs Regulations.
Effective date: October 6, 1977.
Rate forwarded to Regional Commissioner of Customs: Houston, June 15, 1978.

272-354—78——2

(W) Company: Sperry New Holland.
Articles: Argicultural implements and/or industrial equipment.
Merchandise: Cold drawn steel bars—AISI C–1018 and C–1045.
Factories: New Holland, Belleville, Pa.; Grand Island, Lexington, Nebr.; Fowler, Calif.
Statement signed: June 9, 1978.
Basis of claim: Appearing in—price extra.
Effective date: July 17, 1975.
Rate forwarded to Regional Commissioners of Customs: Baltimore; San Francisco, June 20, 1978.

(X) Company: Tenneco Chemicals, Inc.
Articles: Plasticizers, vinyls.
Merchandise: 2 ethyl hexyl alcohol.
Factory: Chestertown, Md.
Statement signed: February 22, 1978.
Basis of claim: Used in.
Effective date: December 1, 1974.
Rate forwarded to Regional Commissioner of Customs: New York, June 30, 1978.

(Y) Company: Westinghouse Electric Corp.
Articles: Zircaloy tubes.
Merchandise: Zircaloy-4-tube reduced extrusions (Trex).
Factory: Blairsville, Pa.
Statement signed: May 23, 1977.
Basis of claim: Used in, less valuable waste.
Effective date: March 9, 1976.
Rate forwarded to Regional Commissioners of Customs: New York; Baltimore, October 14, 1977.

(Z) Company: Whitman Products Ltd.
Articles: Coated papers for book bindings, box covers, and stationery products.
Merchandise: Cellulose nitrate.
Factory: Johnston, R.I.
Statement signed: March 22, 1978.
Basis of claim: Appearing in.
Effective date: January 19, 1978.
Rate forwarded to Regional Commissioner of Customs: Boston, July 5, 1978.

(T.D. 78–294)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

Bonds on Customs form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Associated Mine Services, Inc., 70 Pine St., New York, NY; St. Paul Fire & Marine Ins. Co. D 7/26/78	July 26, 1966	July 27, 1966	New York Seaport; $10,000
CATU Containers S.A., 9 rue Boissonnas, CH-1227, Geneva, Switzerland; Washington International Ins. Co.	July 3, 1978	July 14, 1978	San Francisco, CA; $20,000
Metro Distributing Co. d/b/a Community Beverage Co., 539 So. Mission Road, Los Angeles, CA; The Hanover Insurance Co. (PB 2/11/77) D 6/29/78 [1].	June 6, 1978	June 30, 1978	Los Angeles, CA; $10,000
Fibertex Trading Co. (A NC Corp.) P.O. Box 75047, Charlotte, NC; Peerless Inc. Co. D 7/11/78	June 22, 1977	June 23, 1977	Norfolk, VA; $10,000
Henley & Co. Inc., 750 Third Ave., New York, NY; Washington Int'l. Ins. Co.	June 29, 1978	July 13, 1978	New York Seaport; $10,000
The H. J. Hosea and Sons Co., Port Hosea, P.O. Box 398 Newport (Cincinnati) KY; The Ohio Casualty Ins. Co.	Apr. 3, 1978	July 6, 1978	Cleveland, OH; $30,000
Oivind Lorentzen Inc., 21 West St., New York, NY; Federal Ins. Co. D 7/7/78	May 31, 1972	June 8, 1972	New Orleans, LA; $10,000
Nordship Agencies, Inc., 1 East Wacker Drive, Chicago, Il: St. Paul Fire & Marine Ins. Co. D 6/28/78	June 29, 1973	July 6, 1973	Chicago, IL: $10,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Norton, Lilly & Co., Inc., 90 West St., New York, NY; Midland Ins. Co. D 12/23/77	Dec. 9, 1971	Jan. 21, 1972	New York Seaport; $10,000
Retla Steamship Co., Pier J Berth 249, Long Beach, CA; St. Paul Fire & Marine Ins. Co. D 7/10/78	June 9, 1977	June 10, 1977	Los Angeles, CA; $50,000
S. E. L. Maduro (Florida), Inc., (A Fl Corp.) 501 NE First Ave., Miami, FL; St. Paul Fire & Marine Ins. Co.	July 21, 1978	July 24, 1978	Miami, FL; $50,000
Sumitomo Corporation of America, 345 Park Ave., New York, NY; Federal Ins. Co.	July 21, 1978	July 28, 1978	Los Angeles, CA; $50,000
United Brands Co., 2800 Prudential Center, Boston, MA; Ins. Co. of North America (PB 8/6/75) D 6/22/78 [2]	May 18, 1978	June 5, 1978	Boston, MA; $10,000
United Technologies Corp. & its W/O/S & Divisions: United Technologies International, Inc. (A DE Corp.), Turbo Power and Marine System, Inc. (A DE Corp.), Pratt & Whitney Aircraft of West Virginia, Inc. (A DE Corp.), Essex Group, Inc. (A MI Corp.), Norden Systems, Inc. (A DE Corp.), Otis Elevator Co. (A NJ Corp.), Hamilton Test Systems Inc. (A DE Corp.), Hamilton Test Systems California, Inc. (A DE Corp.), Pratt & Whitney Aircraft Group, Hamilton Standard, Sikorsky Aircraft, Chemical Systems, Power Systems; Hartford, CT; Federal Ins. Co. (PB 7/7/75) D 6/26/78 [3]	June 26, 1978	July 28, 1978	New York Seaport; $50,000
Volkswagen Manufacturing Corp. of America, 7111 E. 11 Mile Road, Warren, MI; The Employers Fire Ins. Co.	Dec. 20, 1977	Feb. 13, 1978	Baltimore, MD; $10,000

[1] Principal is Metro Distributing Co.

[2] Surety is American Home Assurance Co.

[3] Principal is United Technologies Corp. & its W/O/S & Divisions: United Technologies International, Inc. (A DE Corp.), Turbo Power and Marine Systems, Inc. (A DE Corp.), Pratt & Whitney of West Virginia, Inc. (A DE Corp.), Terminal Communications, Inc. (A NC Corp.), Essex International, Inc. (A MI Corp.), Pratt & Whitney Aircraft Div., Hamilton Standard Div., Sikorsky Aircraft Div., Norden Div., Chemical Systems Div.

(BON–3–10)

August 17, 1978.

DONALD W. LEWIS,
(For Leonard Lehman, Assistant
Commissioner, Regulations and Rulings.)

(T.D. 78-295)

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—U.S. CUSTOMS SERVICE DEPARTMENT OF THE TREASURY

PART 159—LIQUIDATION OF DUTIES

Chain of Iron or Steel from Japan Final Countervailing Duty Determination

AGENCY: Customs Service, U.S. Treasury Department.

ACTION: Final countervailing duty determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a determination that the Government of Japan has granted benefits on the manufacture, production, or exportation of chain of iron or steel, and parts thereof, which are considered to be bounties or grants under the countervailing duty law. Consequently, countervailing duties in the amount of these benefits will be collected in addition to duties normally due on shipments of this merchandise.

EFFECTIVE DATE: August 24, 1978.

FOR FURTHER INFORMATION CONTACT: Charles F. Goldsmith, Economist, U.S. Treasury Department, Office of Tariff Affairs, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20229; telephone 202-566-2323.

SUPPLEMENTARY INFORMATION: On February 7, 1978, a "Preliminary Countervailing Duty Determination" was published in the Federal Register (43 F.R. 5127). The notice stated that it had been preliminarily determined that benefits are available to Japanese manufacturers/exporters of chain of iron or steel, or parts thereof, which may constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as the "act"). The benefits preliminarily determined to be bounties or grants were:

(1) Interest-free loans in the form of tax deferrals on funds held in the Overseas Market Development Reserve (OMDR).

(2) Export promotional assistance from the Japan External Trade Organization (JETRO). This assistance is general in nature and not oriented to the export promotion of specific products. However, these

activities do defray costs which would otherwise be incurred by Japanese chain exporters and to that extent may subsidize that industry.

Programs which were investigated and determined preliminarily to be not applicable to or not used by the Japanese chain industry include:

(1) Government financing of new machinery and equipment under the provisions of the "Mechanical Industry Development Temporary Measure Law."

(2) Preferential financing to specifically designated industries provided by the Japan Development Bank.

(3) Preferential financing and export risk insurance provided by the Export-Import Bank of Japan.

The preliminary determination noted that the rebate of the Japanese commodity tax upon export was not considered by Treasury to be a bounty or grant. On June 21, 1978, the Supreme Court of the United States upheld that position in its decision in the case *Zenith Radio Corporation* v. *United States.*

The merchandise subject to this investigation is chains of iron or steel, the links of which are of stock essentially round in cross section and parts thereof, as provided for in item numbers 652.24, 652.27, 652.30, 652.33, and 652.35 of the Tariff Schedules of the United States, Annotated (TSUSA).

The preliminary determination indicated that before a final determination was to be made, consideration would be given to any relevant data, views, or arguments submitted in writing within 30 days from the date of publication of the preliminary determination.

After consideration of the information received, it is hereby determined that the subject merchandise from Japan receives bounties or grants within the meaning of section 303 of the act. The bounties or grants are in the form of benefits conferred by the OMDR and JETRO. The other programs which were investigated, as enumerated above, are hereby determined to be not applicable or not used by the Japanese chain industry and, therefore, not bounties or grants. The rebate upon exportation of the Japanese commodity tax is, in accordance with the *Zenith* case, determined not to result in the payment or bestowal of a bounty or grant.

The aggregate estimated benefit to exports of chain of iron or steel and parts thereof is 2 percent ad valorem. This determination has been made in the absence of information regarding benefits specifically conferred upon the chain industry.

Accordingly, notice is hereby given that chain or chains of iron or steel, the links of which are of stock essentially round in cross section and parts thereof, classifiable under item numbers 652.24, 652.27, 652.30, 652.33, and 652.35 TSUSA, which are imported directly or indirectly from Japan, if entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the act, until further notice, the net amount of such bounties or grants has been estimated and declared to be 2 percent of the f.o.b. price of export to the United States.

Effective on or after the date of publication of this notice in the Federal Register and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable chain or chains imported directly or indirectly from Japan which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of the merchandise.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for Japan the words "Chain and Parts Thereof, of Iron or Steel" in the column headed "Commodity," the number of this Treasury decision in the column headed "Treasury Decision," and the words "Bounty Declared-Rate" in the column headed "Action."

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department order 190 (revision 15), March 16, 1978, the provisions of Treasury Department order 165, revised November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing duty order by the Commissioner of Customs, are hereby waived.

Date: August 16, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register August 24, 1978(FR 37685]

(T.D. 78-296)

Bonds

Approval and discontinuance of Carrier Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Alaska Aeronautical Industries, Inc., P.O. Box 6067, Anchorage, AK; air carrier; Hartford Accident & Indemnity Co.	July 20, 1978	July 20, 1978	Anchorage, AK; $25,000
Astro Van Lines, Inc., 623 Pickett St., Alexandria, VA; motor carrier; The Aetna Casualty and Surety Co. D 7/27/78	Dec. 3, 1976	Mar. 7, 1977	Washington, D.C.; $25,000
Baggett Transportation Co., 2 South 32nd St., Birmingham AL; motor carrier; Fidelity & Deposit Co. of MD. D 8/9/78	Sept. 27, 1963	Oct. 17, 1963	Mobile, AL; $25,000
D. F. Bast, Inc., 1425 N. Maxwell St., Allentown, PA; motor carrier; Aetna Ins. Co. D 7/6/78	Aug. 19, 1971	Aug. 30, 1971	Philadelphia, PA; $25,000
Canadian Pacific Air Lines, Ltd., Montreal, Canada; air carrier; Transamerica Insurance Co. D 7/26/78	Nov. 1, 1949	Mar. 1, 1950	Honolulu, HI; $10,000
Cape Air Freight, Inc., P.O. Box 161, Shawnee Mission, KS; motor carrier; United States Fidelity and Guaranty Co. (PB 8/1/75) D 8/1/78 [1]	Aug. 1, 1978	Aug. 1, 1978	St. Louis, MO; $25,000
The Chief Freight Lines, Co., 2401 N. Harvard, Tulsa, OK; motor carrier; Fireman's Fund Ins. Co.	July 5, 1978	July 21, 1978	Cleveland, OH; $100,000
Ewing Transportation, Inc., Routes 452 & 322, Chester, PA; motor carrier; Fidelity & Deposit Co. D 7/25/78	Apr. 26, 1976	Apr. 26, 1976	Philadelphia, PA; $25,000
Florida Crating & Packing, Inc., 2215 N.W. 70th Ave., Miami, FL; motor carrier; Fidelity & Deposit Co. of MD	July 28, 1978	Aug. 7, 1978	Miami, FL; $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Gay Trucking Co., P.O. Box 7179, Savannah, GA; motor carrier; Hartford Accident and Indemnity Co. (PB 12/21/77) D 6/6/78 [2]	May 1, 1978	June 6, 1978	Savannah, GA; $25,000
Houston Barge Line, Inc., P.O. Box 1277, Houston, TX; water carrier; Fireman's Insurance Company of Newark, NJ (PB 6/29/72) D 7/21/78 [3]	June 29, 1978	July 21, 1978	Houston, TX; $50,000
Pat Izzi Trucking Co., 80 Wayland Avenue, Cranston, RI; motor carrier; National Grange Mutual Insurance Co. (PB 5/19/77) D 7/25/78 [4]	July 25, 1978	July 25, 1978	Providence, RI; $25,000
Leonard Bros. Trucking Co. of Texas, P.O. Box 520002, 2515 N.W. 20th St., Miami, FL; motor carrier; Fidelity and Deposit Co. of MD	Dec. 31, 1977	Mar. 9, 1978	Miami, FL; $25,000
Ligon Specialized Hauler, Inc., P.O. Drawer L, Madisonville, KY; motor carrier; St. Paul Fire & Marine Ins. Co. D 8/11/78	June 30, 1972	Nov. 10, 1972	Cleveland, OH; $50,000
W. W. Lynch, Inc., 1500 West 8th St., P.O. Box 2051, Long Beach, CA; motor carrier; Insurance Company of North America	June 16, 1978	July 7, 1978	Los Angeles, CA; $50,000
National Packers Express, Inc., P.O. Box 162, North Bergen, NJ; motor carrier; Washington International Ins. Co. (PB 5/21/77) D 5/30/78 [5]	May 4, 1978	July 12, 1978	Newark, NJ; $50,000
Ohio Fast Freight, Inc., P.O. Box 808, Warren, OH; motor carrier; Peerless Ins. Co. (PB 8/12/74) D 8/14/78 [6]	Aug. 12, 1978	Aug. 14, 1978	Cleveland, OH; $50,000
Putnam Transfer and Storage Co., 1502 Woodlawn Ave., Zanesville, OH; motor carrier; The Buckeye Union Ins. Co.	July 5, 1978	July 24, 1978	Cleveland, OH; $50,000
Querner Truck Lines, Inc., 1131-33 Austin St., San Antonio, TX; motor carrier; Western Surety Co. (PB 10/2/73) D 8/1/78 [7]	Apr. 19, 1978	Aug. 1, 1978	Laredo, TX; $25,000
Russell Trucking, Inc., P.O. Box 307, Combes, TX; motor carrier; The Home Indemnity Co. D 2/15/78	Jan. 11, 1974	Jan. 29, 1974	Laredo, TX; $30,000
H. G. Snyder Trucking Inc., 1111 Pitfield Blvd., St. Laurent, Quebec, Canada; motor carrier; United States Fidelity and Guaranty Co. (PB 1/25/77) D 7/26/78	June 7, 1978	July 26, 1978	Ogdensburg, NY; $50,000
Southeastern Motor Freight, Inc., P.O. Box 7788, Metairie, LA; motor carrier; Fireman's Fund Ins. Co.	June 30, 1978	July 26, 1978	New Orleans, LA; $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Swift Transportation Co., P.O. Box 3902, Phoenix, AZ; motor carrier; Protective Insurance Co. D 8/10/78	Jan. 19, 1977	Mar. 30, 1977	Nogales, AZ; $25,000
Galveston Container Service d/b/a Uneeda Transfer Co., P.O. Box 3363, 5323 Winnie, Galveston, TX; motor carrier; St. Paul Fire & Marine Ins. Co.	July 7, 1978	July 12, 1978	Galveston, TX; $25,000
Virginia Air Cargo Co., Inc., Route No. 608, Charlottesville, VA; motor carrier; The Travelers Indemnity Co. D 8/8/78	Aug. 8, 1973	Sept. 14, 1973	Norfolk, VA; $25,000
Western Davis Inc., 1800 Bassett, Denver, CO; contract carrier; St. Paul Fire & Marine Ins. Co.	Mar. 15, 1978	June 19, 1978	El Paso, TX; $50,000

[1] Surety is St. Paul Fire & Marine Ins. Co.
[2] Surety is Liberty Mutual Ins. Co.
[3] Surety is Aetna Casualty & Surety Co.
[4] Surety is The Home Indemnity Co.
[5] Surety is Hartford Accident & Indemnity Co.
[6] Surety is The Continental Ins. Co.
[7] Surety is Fidelity & Deposit Co. of Maryland.

(BON–3–10)

August 18, 1978.

DONALD W. LEWIS,
(For Leonard Lehman, Assistant
Commissioner, Regulations and Rulings).

(T.D. 78–297)

Cotton, Wool and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool and manmade fiber textile products manufactured or produced in the Republic of China

There is published below a directive of June 27, 1978, received by the Commissioner of Customs from the Acting Chairman, Committee for the Implementation of Textile Agreements, concerning visa requirements for cotton, wool, and manmade fiber textile products in certain categories manufactured or produced in the Republic of China. This directive amends, but does not cancel, that Committee's directives of September 27, 1972 (T.D. 72–295), and April 19, 1973 (T.D. 73–128).

This directive was published in the Federal Register on June 30, 1978 (43 F.R. 28530), by the Committee.

(QUO-2-1)

August 22, 1978.

WILLIAM D. SLYNE,
(FOR Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., June 27, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive of September 27, 1972, from the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of certain cotton, wool, and manmade fiber textile products, produced or manufactured in the Republic of China, for which the Government of China had not issued a visa. It also further amends, but does not cancel, the directive of April 19, 1973, which established a certification requirement for entry into the United States for consumption and withdrawal from warehouse for consumption of certain textile products which are exempt from the levels of restraint of the bilateral agreement.

One of the requirements is that the visas and exempt certifications include the signature of an official authorized by the Government of the Republic of China.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Manmade Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, the directives of September 27, 1972, and April 19, 1973, are hereby further amended, effective on August 1, 1978, to authorize

Mr. L. K. Chao to issue visas and exempt certifications, succeeding Mr. Chiu-Yeh Liu. Shipments of textile products exported before August 1, 1978, that have been authorized by Mr. Chiu-Yeh Liu shall not be permitted entry for consumption on and after November 1, 1978, but may be withdrawn from warehouse for consumption after November 1, 1978, if entered for warehouse before that date, and provided all other visa and exempt certification requirements have been met.

The actions taken with respect to the Government of the Republic of China and with respect to imports of cotton, wool, and manmade fiber textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 78-298)

Warehousing of Distilled Spirits

Parts 19 and 144, Customs Regulations, relating to Customs warehouses and to warehouse and rewarehouse entries and withdrawals, amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the entry into and withdrawal from Customs bonded warehouses of distilled spirits for export. The amended regulations

will allow distilled spirits to be transferred, without the payment of internal revenue tax, (1) from a distilled spirits plant to a Customs-bonded warehouse for storage until the distilled spirits are exported, and (2) between Customs-bonded warehouses for storage pending exportation. These changes will conform the regulations to the provisions of Public Law 95–176, which amended the Internal Revenue Code as it relates to the warehousing of distilled spirits in Customs bonded warehouses

EFFECTIVE DATE: August 28, 1978.

FOR FURTHER INFORMATION CONTACT: Robert F. Seely, Carriers, Drawback, and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5856.

SUPPLEMENTARY INFORMATION:

BACKGROUND

To encourage the exportation of domestic distilled spirits, and to permit more flexible use of Customs-bonded warehouses in the storage of distilled spirits for export, Public Law 95–176, approved November 14, 1977, amended the Internal Revenue Code as it relates to the storage in Customs-bonded warehouses of distilled spirits on which internal revenue tax has not been paid. The statute authorizes distilled spirits bottled in bond or returned to an export storage facility for export to be transferred, without the payment of internal revenue tax, to a Customs-bonded warehouse for storage until exported and permits the movement of distilled spirits, without the payment of internal revenue tax, between Customs-bonded storage warehouses for rewarehousing pending export.

Before enactment of Public Law 95–176, if a distiller stored spirits on the bonded premises of his own plant, he could withdraw the merchandise for immediate export without the payment of internal revenue tax. However, he could not transfer the merchandise from his plant to a Customs-bonded warehouse for storage until exportation. Spirits entered into a Customs-bonded warehouse could be withdrawn only for use in the United States by foreign embassies, legations, diplomats, foreign military personnel, and other specially qualified individuals.

It is necessary to amend parts 19 and 144 of the Customs Regulations (19 CFR, pts. 19, 144), as they relate to the entry into and withdrawal from Customs-bonded warehouses of distilled spirits, to conform to the statutory changes made by Public Law 95–176. Because

distilled spirits now may be transferred to any Customs-bonded warehouse for storage until exported, section 19.15(g)(2), Customs Regulations, is being amended to refer to the new procedures for the entry into and withdrawal of distilled spirits from Customs warehouses incorporated in section 144.15 of the Customs Regulations, as amended.

Section 144.15 is being amended by adding a new paragraph (c) to allow distilled spirits to be entered into a Customs-bonded warehouse for storage until exportation without the payment of internal revenue tax and to allow the transfer of distilled spirits between Customs-bonded warehouses for export. Section 144.15(a)(3), which reflected the former procedures, is being deleted. A new paragraph (d) is being added to section 144.15 to modify the language of the warehouse entry bond, the general term bond, or other appropriate bond form, to include a reference to section 5214(a)(9) of the Internal Revenue Code of 1954, as amended by Public Law 95–176 (26 U.S.C. 5214(a)(9)), and to provide that the modified bond also is applicable to distilled spirits entered into a Customs-bonded storage warehouse for export.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because these amendments merely conform the Customs Regulations to Public Law 95–176, notice and public procedure thereon are impracticable and unnecessary, and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENTS TO THE REGULATIONS

Parts 19 and 144 of the Customs Regulations (19 CFR, pts. 19, 144) are amended in the following manner:

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

Section 19.15(g)(2) of the Customs Regulations (19 CFR 19.15(g)(2)) is amended to read as follows:

19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.

* * * * * * *

(g)(1) * * *

(2) Domestic distilled spirits transferred from a Customs-bonded manufacturing warehouse, Class 6, to a Customs-bonded storage warehouse, Class 2 or 3, in accordance with section 5521 of the Internal Revenue Code, as amended (26 U.S.C. 5521), and section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), shall be rewarehoused in accordance with the procedure for withdrawal and rewarehousing set forth in subparagraph (1) of this section. For other regulations concerning the entry and withdrawal of distilled spirits, see section 144.15 of this chapter.

(R.S. 251, as amended, sec. 311, 624, 46 Stat. 691, as amended, 759, Public Law 95–176, 91 Stat. 1363 (19 U.S.C. 66, 1311, 1624; 26 U.S.C. 5214))

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

The heading to section 144.15 of the Customs Regulations (19 CFR 144.15) is modified, and the section is amended by deleting paragraph (a)(3) and by adding new paragraphs (c) and (d), as follows:

144.15 Entry and withdrawal from Customs bonded warehouses of distilled spirits.

(a) *Distilled spirits entered in warehouse under section 5066(a), Internal Revenue Code—*

* * * * * * *

(3) [Deleted]

(b) *Distilled spirits transferred from a manufacturing warehouse to a storage warehouse under section 5521 of the Internal Revenue Code—*

* * * * * * *

(c) *Distilled spirits entered under section 5214(a)(9), Internal Revenue Code—*

(1) *General Rule.* Distilled spirits may be entered into a Customs bonded storage warehouse under section 5214(a)(9), Internal Revenue Code, as amended (26 U.S.C. 5214(a)(9)), in the same manner as any other merchandise is entered for warehouse, unless otherwise provided in this section.

(2) *Withdrawal only forexportation.* Distilled spirits warehoused under section 5214(a)(9), Internal Revenue Code, may be withdrawn only for the purpose of exportation, either directly or after rewarehousing at the same or another port. The distilled spirits may not be withdrawn for domestic consumption.

(d) *Modification of warehouse entry bond.* The recital clause of the warehouse entry bond, Customs Form 7555, the general term bond, Customs Form 7595, or other appropriate bond form, shall be modified prior to its approval by the addition of the

following condition: "Or, if said articles shall be withdrawn in accordance with section 5066(b), 5066(c), or 5214(a)(9), Internal Revenue Code of 1954, as amended (26 U.S.C. 5066(b), 5066(c), or 5214(a)(9)), there shall be compliance with these and all other applicable statutes and regulations, or in default thereof, if the obligors shall pay to the appropriate Customs officer as liquidated damages an amount equal to the aggregate sum of double the duties plus the internal revenue tax assessable on the merchandise not so withdrawn."

(R.S. 251, as amended, sec. 624, 46 Stat. 759, Public Law 95-176, 91 Stat. 1363 (19 U.S.C. 66, 1624; 26 U.S.C. 5214))

R. E. CHASEN,
Commissioner of Customs.

Approved: August 18, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register August 28, 1978. (FR 38381)]

(T.D. 78-299)

Foreign Currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in T.D. 78-237 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Ireland pound:	
August 11, 1978	$1.9640
Japan yen:	
August 7, 1978	$0.005297
August 8, 1978	.005338
August 9, 1978	.005330
August 10, 1978	.005357
August 11, 1978	.005390

Switzerland franc:

August 7, 1978	$0.5858
August 8, 1978	.5910
August 9, 1978	.5931
August 10, 1978	.5953
August 11, 1978	.6068

United Kingdom pound:

August 11, 1978	$1.9640

(LIQ-3)

August 21, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78-300)

Foreign Currencies—Daily Rates for Countries Not On Quarterly List

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:

August 7, 1978	$0.5851
August 8, 1978	.5874¾
August 9, 1978	.5892
August 10, 1978	.5910
August 11, 1978	.5910

Hong Kong dollar:

August 7, 1978	$0.2136½
August 8, 1978	.2130
August 9, 1978	.2135
August 10, 1978	.2128
August 11, 1978	.2122

272-354—78——4

Iran rial:	
August 7–11, 1978	$0.0140
Philippines peso:	
August 7–11, 1978	$0.1357
Singapore dollar:	
August 7, 1978	$0.4430
August 8, 1978	.4445
August 9, 1978	.4460
August 10, 1978	.4461
August 11, 1978	.4471
Thailand baht (tical):	
August 7, 1978	$0.0489
August 8, 1978	.0489
August 9, 1978	.0494
August 10, 1978	.0494
August 11, 1978	.0494

(LIQ-3)

August 21, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

ERRATUM

In CUSTOMS BULLETIN, vol. 12, No. 30, dated July 26, 1978, in T.D. 78–233, on page 9, change fifth line to read:

Revokes: T.D. 78–229–U, superseded.

In CUSTOMS BULLETIN, vol. 12, No. 29, dated July 19, 7978, in T.D. 78–228, on page 18, change effective date from July 6, 1978, to September 5, 1978.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1211)

THE UNITED STATES v. PAUL M. W. BRUCKMANN, No. 77–26 & 77–30
(— F. 2d —)

1. CLASSIFICATION OF IMPORTS–LAMP PARTS–TSUS

   Customs Court order requiring reliquidation of merchandise comprising street lamp parts as classifiable under the *eo nomine* item 653.30, TSUS, for lamps rather than the "basket" or residual item, 653.39, is *reversed.*

2. CROSS-APPEAL, TIMELY FILING THEREOF

   A cross-appeal is timely filed if filed within 14 days of the date on which the first notice of appeal was filed.

3. EO NOMINE

   An *eo nomine* provision that does not specifically provide for parts does not include parts.

4. ID.–TSUS

   Adjectival TSUS item denominations are not *eo nomine* provisions.

United States Court of Customs and Patent Appeals, August 17, 1978

Appeal from United States Customs Court, 4702

[Reversed.]

Barbara Allen Babcock, Assistant Attorney General, *David M. Cohen*, Chief, Customs Section, *Glenn E. Harris* for the United States.
Paul M. W. Bruckmann, pro se.

[Oral argument on April 3, 1978 by Glenn E. Harris for appellant and by Paul M. W. Bruckmann for appellee]

Before MARKEY, Chief Judge, RICH, BALDWIN, LANE and MILLER, Associate Judges.

BALDWIN, Judge.

The United States appeals from the order of the Customs Court, 78 Cust, Ct. 155, C.D. 4702, 435 F. Supp. 1219 (1977), granting plaintiff's (hereinafter Bruckmann) cross-motion for summary judgment on the basis of its holding that [1] incandescent gas lamp parts are properly classified under item 653.30, Tariff Schedules of the United States (TSUS) rather than under residual item 653.39, TSUS. We reverse.

Bruckmann cross-appeals from the holding of the Customs Court that the cast iron "stems" or support posts of the lamps are not properly classified as "columns, pillars, or posts" under item 652.93. We affirm.

The merchandise described on the protest as "Victorian Street Lamps from England, Cast Iron Post, and Frog (iron connecting bracket between lantern and post)," was classified under item 653.39, TSUS.[1] Bruckmann (appellee/cross-appellant) urged that the merchandise be classified under item 653.30.

The relevant portions of the TSUS are as follows:

Schedule 6, Part 3, Subpart F:

	Hangars and other buildings, bridges, bridge sections, lockgates, towers, lattice masts, roofs, roofing frameworks, door and window frames, shutters, balustrades, columns, pillars, and posts, and other structures and parts of structures, all the foregoing of base metal:	
	Of iron or steel:	
	* * * * * * *	
	Columns, pillars, posts, beams, girders, and similar structural units:	
	Not in part of alloy iron or	
652.93	steel:	
	Cast-iron (except malleable cast-iron) articles, rough or advanced-----	[2]
	* * * * * * *	
	Illuminating articles and parts thereof, base metal:	
653.30	Incandescent lamps designed to be operated by propane or other gas,	

[1] Under the provisions of 653.39, lamp parts were dutiable at the rate of 19% ad valorem at the time of import.

[2] Under item 652.93, the rate of duty for articles entered in 1968 is 2.5% ad valorem; for articles entered in 1970, the rate of duty is 2% ad valorem; for articles entered in 1971, the rate of duty is 1.5% ad valorem.

	or by compressed air and kerosene or gasoline	[3]
	Other:	
653.35	Table, floor and other portable lamps for indoor illumination, or brass	* * *
	Other:	
653.37	Of brass	* * *
653.39	Other	19% ad val.

The questions considered by the Customs Court were: 1) whether the lamp "stems" were properly classifiable under item 652.93, 653.30 or 653.39, and 2) whether the remainder of the lamp parts were classifiable under items 653.30 or 653.39.

In addition to reviewing those issues, we must also determine whether we have jurisdiction to hear the cross-appeal.

OPINION

I.

The United States argues that we lack jurisdiction to consider the cross-appeal. The argument is based on the assumption that a cross-appeal is no more than a separate appeal undertaken by one of the parties below. The syllogism continues that since the time limit for filing appeals is 60 days [4] after the entry of the decision of the Customs Court, and Bruckmann filed notice of cross-appeal 68 days after said entry, the separate appeal was untimely and this court lacks jurisdiction over the appeal. We do not agree. The statute gives us jurisdiction to review "any judgment or order of the Customs Court" once a proper application for such review is filed in the office of the clerk. Of course, only those parties to a proceeding in the Customs Court who appeal are able to improve their legal position.[5] While our rules do

[3] Under item 653.30, the rate of duty for articles entered in 1968 is 9% ad valorem; for articles entered in 1970, the rate of duty is 7% ad valorem; for articles entered in 1971, the rate of duty is 6% ad valorem.

[4] 28 USC 2601 states:

§ 2601. Appeals from Customs Court decisions

(a) A party may appeal to the Court of Customs and Patent Appeals from a final judgment or order of the Customs Court within sixty days after entry of the judgment or order.

(b) An appeal is made by filing in the office of the clerk of the Court of Customs and Patent Appeals a notice of appeal which shall include a concise statement of the errors complained of. A copy of the notice shall be served on the adverse parties. When the United States is an adverse party, service shall be made on the Attorney General and the Secretary of the Treasury or their designees. Thereupon, the Court of Customs and Patent Appeals shall order the Customs Court to transmit the record and evidence taken, together with either the findings of fact and conclusions of law or the opinion, as the case may be.

(c) The Court of Customs and Patent Appeals may affirm, modify, vacate, set aside, or reverse any judgment or order of the Customs Court lawfully brought before it for review, and may remand the cause and direct the entry of an appropriate judgment or order, or require such further proceedings as may be just under the circumstances. The judgment or order of the Court of Customs and Patent Appeals shall be final and conclusive unless modified, vacated, set aside, reversed, or remanded by the Supreme Court under section 2106 of this title.

As amended June 2, 1970, Pub. L. 91-271, Title I, § 103, 84 Stat. 275.

[5] See *Langnes* v. *Green*, 282 U.S. 531, 538 (1931).

not, of course, provide for appeals or cross-appeals, they do contemplate cross-appeals;[6] consequently, Rule 1.4(a),[7] making the Federal Rules of Appellate Procedure applicable in this court in certain situations is pertinent here. Rule 4(a) of the Federal Rules of Appellate Procedure states, in part, that "[i]f a **[2]** timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed." The cross-appeal was timely filed. Consequently, the cross-appeal is properly before us.

II.

Nonetheless, Bruckmann's argument in the cross-appeal that the stems of the lamps should be classified under item 652.93 is not persuasive. This classification falls under the dominant heading (652.92 TSUS) "Columns, pillars, posts, beams, girders and similar structural units." These articles must be parts of structures. A complete definition of "structural" or "structure" is not to be found. An adequate point of departure is found in *Simon, Buhler & Baumann (Inc.)* v. *United States*, 8 Ct. Cust. Appls. 273, 276, T.D. 37537 (1918), as follows:

> Ordinarily speaking, "structure" carries with it the idea of size, weight, and strength, and it has come to mean anything composed of parts capable of resisting heavy weights or strains and artificially joined together for some special use.

In *United States* v. *Humble Oil & Refining Co., et al.*, 46 CCPA 138, 140, C.A.D. 717 (1959), we indicated "that the word 'structures,' is not limited to such erections as buildings, bridges, and edifices." In *Laurence Myers Scaffolding Co.* v. *United States*, 57 Cust. Ct. 333, 339, C.D. 2809, 259 F. Supp. 874, 879 (1966), "bridge overhang shores, highway shores, and building shores" were all found to serve a purpose similar to the articles mentioned in the TSUS item. Therefore, bridges and highways are considered to be statutory "structures." In *J. Ray McDermott & Co.* v. *United States*, 69 Cust. Ct. 197, C.D. 4394, 354 F. Supp. 280 (1972), an offshore oil well drilling platform was found to be a "structure."

Clearly, none of these structures could be analogized to the lamp parts here in issue. We agree that lamp "stems" are not parts of structures within the meaning of the heading above item 652.93.

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[6] Consider the reference to cross-appeals in rules 5.6(a), 5.9(g) and 5.12(e) of this court.

[7] Rule 1.4(a) of this court provides:

(a) *Federal Rules of Appellate Procedure.* The Federal Rules of Appellate Procedure shall govern any practice or procedure not specifically covered by these rules.

III.

We do not agree with the holding of the Customs Court that the lamp parts in issue are properly classifiable under item 653.30 rather than under the remainder or "basket" item 653.39.

[3] It is fairly well-settled law that an *eo nomine* [8] provision which does not specifically provide for parts does not include parts. An example is found in *Robertson* v. *Gerdan*, 132 U.S. 454, 458–9 (1889), in which the Supreme Court stated: "If Congress had intended * * * to impose the same duty on parts of musical instruments which it imposed on musical instruments, it would have been easy to impose that duty on 'musical instruments of all kinds, and parts of the same.'"

Similarly, in *United States* v. *Schoverling*, 146 U.S. 76, 82 (1892), the Supreme Court refused to permit the imposition of duties on parts of breech-loading shotguns under an *eo nomine* provision specifically for "breech-loading shotguns" (but containing no mention of parts).

This court, in *United States* v. *Lyons Transport*, 45 CCPA 104, C.A.D. 681 (1958), found that parts of typewriters, specifically type, were not dutiable under the *eo nomine* provision for typewriters.

While apparently not disagreeing with this general rule, the Customs Court appears to consider our decision in *Velan Steam Spec. & Velan Valve Corp.* v. *United States*, 57 CCPA 58, C.A.D. 976, 420 F. 2d 1399 (1970), to carve a significant exception out of it. *Velan* should not be construed in as broad a manner as has been done by the Customs Court. In *Velan*, the merchandise (parts of "hand-operated and check" valve devices) was classified under item 680.22, TSUS. The importer/appellant urged that the merchandise consisted only of parts and should have been classified under item 680.27.

The pertinent provisions of the TSUS (as existing at the date of entry) read as follows:

	Taps, cocks, valves, and similar devices, however operated, used to control the flow of liquids, gases, or solids, all the foregoing and parts thereof:	
	Hand-operated and check:	
680.20	Of copper	* * *
680.22	Other	22.5% ad val.
	Other:	
680.25	Ballcock mechanisms, and parts	* * *
680.27	Other	10% ad val.

[8] The term "*eo nomine*" refers to the description of a "commodity by a specific name, usually one well known to commerce." See R. Sturm, *A Manual of Customs Law* 215 (1974).

The entry denominated "hand-operated and check" is *adjectival* in form. It can do no more than modify the *noun* or *nouns* preceding it in the hierarchy of the table. The nouns are "[t]aps, cocks, valves * * * and parts thereof." In *Velan*, the parts travel with the whole to the adjective below. But sight should not be lost of the fact that those [4] adjectival item denominations are NOT *eo nomine* provisions. Sections 680.22 and 680.27 do *not name* anything but only qualify something previously named.

We do not consider *Velan* to be erosive of the general rule regarding *eo nomine* provisions and parts.

In the TSUS provisions of the case at hand, the general heading recites "articles and parts" but the subheading argued by Bruckmann to be proper (653.30) is *not* adjectival in form and cannot fall under the rationale of *Velan*. That item is an *eo nomine* provision and, by the general rule, does not include parts. The only other item under which the lamp parts in issue can be classified is 653.39. And there they belong.

An accurate analysis of the passdown of a "parts" provision is found in the United States' Brief:

> Inferior headings of the *Velan*-type (*i.e.* containing no noun within them) may be proliferated *ad infinitum* under a main (superior) heading covering "parts" and the headings of each succeeding rank will all encompass "parts" under the implicit language "all the foregoing."[56] However, once an inferior heading of the *eo nomine* (or class designation) type intervenes at any stage of a breakdown without a specification of "parts," neither that heading, nor any succeeding headings *indented under and subordinate to it in rank*, may be construed to include such "parts," whether the indented headings be of the *eo nomine* or the *Velan*-type.[57] The presence of a "parts" provision in one *eo nomine* type heading does not, however, preclude any inferior headings of *coordinate* rank from *omitting* such a provision, in which event such parts fall to the coordinate residual clause.

Summary

We hold that all of the "lamp parts" in issue were properly classified by the Customs Service under item 653.39.

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[56] The limitation engrafted at each stage of such a breakdown runs in terms of *characteristics* of products rather than *identification* of products.

[57] In other words, a limitation, in the form of an *eo nomine* breakout from a heading of superior rank, cannot be reversed by an inferior indented breakdown (any more than a *Velan*-type can be), for that would offend the plainly stated rule that no inferior headings can *expand* the scope of that from which they were carved (Rule 10(c)(i)). This rule is as applicable to inferior headings under a main heading which *does* encompass "parts" as it is to a main (superior) heading *not* encompassing "parts"—from the latter, *nothing* which includes "parts" can be carved.

The United States' motion for summary judgment should have been granted and Bruckmann's denied. The order of the Customs Court directing reliquidation is *reversed.*

LANE, Judge, concurring.

While I find myself in complete agreement with the majority, I believe it necessary to discuss two additional points regarding part III of the opinion.

First, in *Velan,* as correctly noted by the majority, the inferior heading in question (Hand-operated and check) contained no noun. Significantly, the absence of a noun not only renders the provision unintelligible in and of itself, but implies that it must be read in conjunction with the nouns (Taps, cocks, valves, and similar devices, however operated, used to control the flow of liquids, gases, or solids, all of the foregoing and parts thereof) of the immediately superior heading. In contradistinction, here the inferior heading (Incandescent lamps designed to be operated by propane or other gas, or by compressed air and kerosene or gasoline) contains a noun, "lamps." As such, resort to the nouns of the immediately superior heading is unnecessary to render this inferior heading intelligible.

Second, it is clear that Congress did not intend that provision for parts in superior headings be automatically inferred into all immediately inferior headings. This can be seen from the fact that in at least 108 sections of the TSUS. Congress considered it necessary to specifically provide for parts in a superior heading and then again in the immediately inferior heading.* I would hesitate to conclude that Congress was merely being redundant 108 times.

MILLER, Judge, dissenting in part.

I agree that the "lamp parts" in issue were properly classified by the Customs Service under item 653.39 and that the Government's motion for summary judgment should have been granted by the Customs Court. The two "additional points" made by Judge Lane in his concurring opinion are persuasive.

Bruckmann's cross-appeal should be dismissed as untimely under 28 USC 2601. Rule 4(a) of the Federal Rules of Appellate Procedure *does not apply to appeals from the Customs Court,* but specifically applies to appeals "from a district court," thus:

> (a) *Appeals in Civil Cases.* In a civil case . . . in which an appeal is permitted by law as of right *from a district court* to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days of the date of the entry of the judgment or order appealed from; but

* See for example TSUS items 660.25; 660.30; 660.75; 661.12; 666.20; 674.60; 674.80; 683.10; 683.70; 684.62.

> if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of such entry. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this subdivision, whichever period last expires.
>
> . . . .
>
> Upon a showing of excusable neglect, *the district court* may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision. Such an extension may be granted before or after the time otherwise prescribed by this subdivision has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the court shall deem appropriate. [Emphasis added.]

Therefore, the matter quoted by the majority opinion relating to the 14-day period following the filing of the first notice of appeal is not applicable to an appeal *from the Customs Court.*

Even though, as the majority opinion states, the CCPA rules "contemplate cross-appeals," a CCPA rule cannot enlarge the statutory period provided by 28 USC 2601. Fed. R. App. P. 26(b); *Seneca Grape Juice Corp.* v. *United States*, 61 CCPA 118, 492 F. 2d 1235 (1974).

ERRATUM

In Customs Bulletin, Vol. 12, No. 35, dated August 30, 1978, page 41, C.A.D. 1210, the headnotes were left off. These are the headnotes as follow:

1. Classification of Imports – Rimactane – TSUS

Customs Court judgment, 79 Cust. Ct. 53, C.D. 4713, 440 F. Supp 1237 (1977), dismissing appellant-importer's claim that Rimactane, an antibiotic imported from Italy, is classifiable under Schedule 4, Part 3, item 437.32, TSUS, as "Antibiotics: Other," and sustaining original classification under Schedule 4, Part 1, item 407.85, TSUS, as benzenoid "Drugs: Other," *reversed.*

2. Id.

Customs Court correctly construed Schedule 4, Part 1, headnote 3, TSUS, as requiring very same benzenoid structure found in original animal or vegetable precursor to remain identifiable at all distinct stages of production of imported product if the importation is to be excluded from Schedule 4, Part 1.

3. Id. – Issue: Naturally Occurring or Synthetic

Issue on appeal is whether benzenoid, quinoid, or modified benzenoid structure of Rifamycin S (an intermediate in the production of Rimactane from Rifamycin B, a naturally-occurring mold extract) is naturally occurring or synthetic.

4. Id. – Tariff Classification Study

Fifth Supplemental Report of the Tariff Classification Study, in describing anthraquinone as *both* benzenoid and quinoid, undermines trial court's conclusion that Rifamycin S is *more accurately* described as quinoid; Rifamycin S is *equally accurately* described as *either* benzenoid or quinoid.

5. Id.

Tariff Classification Study suggests that *"term"* "cyclic organic chemicals having a benzenoid, quinoid, or modified benzenoid structure" was intended to describe a single class of compounds; Customs Court's reliance on separate enumeration of words "benzenoid" and "quinoid" as indicative of a legal distinction between compounds so characterized is, therefore, discounted.

6. Resolution Based on Examination of Original Benzenoid Structure

Question of whether benzenoid, quinoid, or modified benzenoid structure of Rifamycin S is naturally occurring for purposes of Schedule 4, Part 1, headnote 3, TSUS, must be resolved based on examination of essential characteristics of original benzenoid structure and analysis of nature of structural changes that have occurred, as far as they are known.

7. Tariff Classification Study Indicates Endocyclic Unsaturation as Essential Characteristic

Fifth Supplemental Report of the Tariff Classification Study indicates that drafters regarded simple presence of endocyclic unsaturation as essential characteristic of benzenoid, quinoid, or modified benzenoid structure and were not particularly concerned with quantum-mechanical niceties of exactly where electrons spend most of their time.

8. Id. – Mere Variation in Degree

Unsaturated ring structures of Rifamycin S and its natural precurser vary only in distribution of available ring-carbon electrons which, in this case, appears to be mere variation in degree; Customs Court erred in failing to find unsaturated ring structure of Rifamycin S to be naturally occurring and improperly dismissed importer's contention that Rimactane is excluded from Schedule 4, Part 1, TSUS, by headnote 3.

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4759)

H. REISMAN CORP. *v.* UNITED STATES

American selling price—Vitamin B-12

AMERICAN SELLING PRICE—FREELY SOLD

For the purpose of determining an American selling price under section 402(e) of the Tariff Act of 1930, as amended, the price in question must be one at which all purchasers at wholesale can buy the product.

Court Nos. R69/11791, etc.

Port of New York

[Judgment for defendant.]

(Decided August 7, 1978)

Barnes, Richardson & Colburn (*Rufus E. Jarman, Jr.*, and *James Caffentzis* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

WATSON, Judge: This is a dispute as to what was the American selling price [1] of vitamin B–12, U.S.P.[2] manufactured and sold by Merck & Company in 1969. There is no dispute that the American selling price of that product should determine the valuation of the seven entries of vitamin B–12, imported from England in 1969, which are the subject of this consolidated action.

During 1969 Merck sold vitamin B–12, U.S.P. to wholesale purchasers at prices ranging from $8.00 per gram down to $5.75 per gram in quantities of 50 or more grams. The wholesale purchasers were of two types, those who used the vitamin B–12 in the manufacture of pharmaceutical or food products (users) and those who resold the vitamin B–12 to users, after repackaging it in bulk form (resellers). Both types were purchasers at wholesale within the meaning of section 402(f)(3) of the Tariff Act of 1930, as amended.[3]

The price of $8.00 was the price at which the vitamin B–12 was offered for sale by Merck in its published price list and the price at which approximately 16% of its product was sold to users.

The price of $6.80 per gram, claimed by plaintiff, was the price at which Merck sold the vitamin B–12 to resellers.

The price of $5.75 per gram, alternatively claimed by plaintiff, was that price to users at which the greatest quantity of vitamin B–12 was sold.

The issue in this case can therefore be stated as whether any price other than $8.00 satisfies the statutory requirements of American selling price, which, when the relevant main and definitional portions

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[1] Section 402(e), Tariff Act of 1930, as amended:

(e) AMERICAN SELLING PRICE.—For the purposes of this section, the American selling price of any article produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the article in condition packed ready for delivery, at which such article is freely sold or, in the absence of sales, offered for sale for domestic consumption in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities or the price that the manufacturer, producer, or owner would have received or was willing to receive for such article when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

[2] Vitamin B–12 is also referred to as cyanocobalamin crystalline.

[3] Section 402(f)(3):

(f) DEFINITIONS.—For the purposes of this section—

* * * * * * * *

(3) The term "purchasers at wholesale" means purchasers who buy in the usual wholesale quantities for industrial use or for resale otherwise than at retail; or, if there are no such purchasers, then all other purchasers for resale who buy in the usual wholesale quantities; or, if there are no purchasers in either of the foregoing categories, then all other purchasers who buy in the usual wholesale quantities.

are combined, requires the price to be one at which the article is freely sold to all purchasers at wholesale, without restrictions as to use.

It would appear that the price of $8.00, simply because it was the highest price, was the only one at which *all* purchasers at wholesale could buy the article and is therefore the only one which satsifies the statutory definition. *F. B. Vandegrift & Co., Inc.* v. *United States*, 56 CCPA 105, C.A.D. 962, 410 F.2d 1259 (1969); *United States* v. *Mexican Products Co.*, 28 CCPA 80, C.A.D. 129 (1940); *Border Brokerage Co.* v. *United States*, 55 Cust. Ct. 748, A.R.D. 194 (1965).

The $6.80 price to resellers, aside from not being a price at which all purchasers at wholesale could buy, was subject to a restriction by Merck that the article must be resold. If used for other purposes the price would revert to $8.00 per gram. This was a restriction on use affecting the value of the merchandise which, under the clear language of section 402(f)(1), prevents the consideration of these sales as "freely sold." [4]

The $5.75 price to users at which the largest quantities were sold was nevertheless not a price at which all purchasers at wholesale could buy and could therefore not be the price which satisfies the statutory requirements.

Plaintiff raises the specter of a situation in which only one out of a thousand sales is made at the putatively controlling list price while the remainder are at a lower price. However, it is not necessary to rely here on any principle beyond that which requires the sales at the "American selling price" to be of some reasonable significance and for there not to be a gross or shocking imbalance between the practical significance or commercial meaningfulness of the sales at the higher price and the sales at lower prices. It is enough to note that the price of $8.00 is not subject to question on this point.

For the above reasons, plaintiff has failed to disprove the correctness of the appraised value of $8.00 per gram and its claims must be overruled.

Judgment will enter accordingly.

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[4] Section 402(f)(1):

(f) DEFINITIONS.—For the purposes of this section—

(1) The term "freely sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (i) are imposed or required by law, (ii) limit the price at which or the territory in which the merchandise may be resold, or (iii) do not substantially affect the value of the merchandise to usual purchasers at wholesale.

(C.D. 4760)

ALUMINUM HOUSEWARES CO., INC. *v.* UNITED STATES

Measuring spoons

SPOONS—KITCHENWARE—COMMON MEANING—ADMISSIONS

Measuring spoons exported from Japan in 1971 and classified in liquidation upon entry at San Francisco under TSUS item 650.56 as spoons which are kitchenware with base metal or nonmetal handles, *held* properly classified since they are within the common meaning of the term "spoon", are admittedly kitchenware, and are not "more than" spoons as claimed by the importer because they differ from other types of spoons inasmuch as the term "spoon" is broad in scope, embracing many varieties of spoons serving different functions.

Court No. 72-1-00118

Port of San Francisco

[Dismissed.]

(Decided August 10, 1978)

Glad, Tuttle & White (*Jonathan K. Bellesy* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*William F. Atkin*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this case consists of measuring spoons which were exported from Japan in February, 1971, and classified in liquidation upon entry at San Francisco, California under TSUS item 650.56 at the duty rate of 17 *per centum ad valorem* as spoons with base metal (other than stainless steel) or nonmetal handles. It is claimed by plaintiff that the merchandise should have been classified as hand tools (including table, kitchen and household implements of the character of hand tools), not specially provided for, of iron or steel, under TSUS item 651.47 as modified by T.D. 68-9 at the duty rate of 10 *per centum ad valorem*.

The imported article is described on the invoice as item No. 2700, stainless steel four-piece measuring spoon set with plastic handles in one solid color. And each set consists of four spoons, i.e., a tablespoon, a teaspoon, a one-half teaspoon, and a one-quarter teaspoon. Although plaintiff introduced testimonial evidence at the trial with a view toward presenting a subsidiary issue as to whether the imported article is kitchenware or householdware, the posture which plaintiff heretofore assumed in its pleading eliminates such an issue. Thus, under the pleadings it is admitted that (1) the merchandise is designed to measure food in a proper amount for cooking ingredients as called for

by various recipes, (2) the merchandise is used to measure food in a proper amount for cooking ingredients as called for by various recipes, (3) the merchandise is used in the kitchen, and (4) the merchandise is held and operated by the unaided hands. And put in issue under the pleading as issues of law are the allegations that (1) the merchandise is more than a spoon, and (2) the function and use of a spoon is limited to scooping food.

Bearing on these issues Richard B. Cronheim, plaintiff's president, testified that he was familiar with the item 2700 measuring spoons covered by the entry at bar and that he arranged for the purchase of the spoons from Japan, and that exhibit 1 (consisting of a set of four spoons, among other items, bound in a package) is similar in all material respects to the measuring spoons imported in this case.

The witness testified that he was responsible for the descriptive advertising in the plaintiff's price lists under which the imported article (exhibit 1) is offered for sale under the specific classification as "Accurate Measuring Aids" while a mixing spoon (exhibit 3) is described therein under the categorization of "Kitchen Tools and Gadgets". In this connection the witness testified (R. 29–30):

> Q. Why is Plaintiff's Exhibit 1 depicted under the category for " * * * MEASURING AIDS"?—A. Because that is exactly what it is.
>
> Q. Is Plaintiff's Exhibit 1 considered to have different functions and uses from Plaintiff's Exhibit 3?—A. It certainly does.
>
> Q. Why is Plaintiff's Exhibit 1 not listed under the section for "KITCHEN TOOLS AND GADGETS"?—A. Because it really isn't a tool. It is a measuring aid, and that is the only way I could describe it to you. It has a different purpose which is simply to measure.
>
> Q. And because of that you consider its purpose as a measuring aid, which is the primary function of the Plaintiff's Exhibit 1?—A. Yes, I do.

The witness testified that he did not consider exhibit 1 to be a spoon within the lexicographical definition of a spoon because of its shape, its accuracy, and because its capacity is marked. He stated that exhibit 1 differs from teaspoons (exhibits 5 and 6) in that the edges on exhibit 1 are purposely sharp so as to enable the user to cut through solid ingredients in a canister or other storage utensil whereas the edges of tableware are not sharp inasmuch as they are intended to be placed in the mouth.

H. George Maier, a manufacturers' representative with Maier & Associates, Inc. and former president and part owner of Allied Western Distributors, Inc. [both of which are engaged in representing plaintiff as sales representatives] testified (R. 58–59):

Q. Do you think that Plaintiff's Exhibit 1 is amenable to being used as a utensil in the consumption of food?—A. No.

Q. For what reason?—A. Well, it would take an awful long time to eat very much food with these small spoons. Most measuring spoons—and I feel certain these are included in that—are sharp about the edges, and they are sharp for a purpose and that is to clearly cut whatever you are measuring.

Q. In your experience of having participated in the sale of flatware in the western part of the United States, is flatware usually embossed with the capacity of the particular piece? Does a particular spoon have indicated on there that it measures one teaspoon or tablespoon?—A. I have never seen that.

Q. Can a teaspoon be used as a flatware teaspoon to measure a fraction of a teaspoon accurately?—A. Not accurately.

Q. What do you consider to be the primary purpose of Plaintiff's Exhibit 1?—A. Well, to correctly and accurately meter or measure an ingredient or something you might be cooking, something that you might be putting into. In my instance, it was a clothes washer.

Q. And you say that flatware cannot be used to measure an exact quantity of a particular article?—A. Not in my view.

Louise Fiszer, a cooking teacher employed at the Judith Ets-Hokin School of Cooking in San Francisco, California, testified that she is familiar with exhibit 1, has personally used that type of article, has instructed her students with respect to the use of that article, and believes that the proper preparation of a recipe could be thwarted if the person preparing the recipe were to use a teaspoon or tablespoon as opposed to a measuring spoon. The witness also testified (R. 90–91):

Q. Will you examine Plaintiff's Exhibit 1, and tell me if you believe that those are specially constructed to enable an individual to measure an exact quantity of a particular ingredient?—A. Yes.

Q. In what way would they be constructed to accomplish that purpose?—A. The size of the bowl, I guess, would perform that function.

Q. Is it your experience also that measuring spoons generally have sharp edges, sharper edges than flatware?—A. Yes.

Q. What would be the purpose of a sharp edge on measuring spoons?—A. To scoop things out more readily and easily, to cut through something like shortening which it would just really cut right there.

The foregoing comprises the substance of evidence offered by plaintiff on the issue of "more than" a spoon. Plaintiff argues (brief, p. 19):

It is evident that the imported articles have a more limited and specific function than spoons in general. The articles in issue are designed and constructed to measure accurately. To this end, they are marked to indicate an exact quantity, and their sharp

> edges facilitate the scooping of the ingredient to be measured. They generally cannot be used for eating because they are too small, and their sharp edges would cut the tongue. The shape of the bowl of the imported measuring spoon is also significantly different from the shape of spoons, examples of which were introduced as Exhibits 5 and 6.

The government contends that the imported measuring spoons are not more than spoons. The government argues that none of the so-called "limited" and "specific" functions of measuring spoons detract from their being classified as spoons.

The court is in agreement with defendant. In the court's view the imported measuring spoons, of which exhibit 1 is a sample, are spoons within the meaning of item 650.56. In *The Englishtown Corporation* v. *United States*, 64 CCPA 84, C.A.D. 1187, 553 F.2d 1258 (1977) our appellate court reaffirmed its earlier position on the "more than" doctrine enunciated in *E. Green & Son (New York), Inc.* v. *United States*, 59 CCPA 31, 34, C.A.D. 1032, 450 F.2d 1396, 1398 (1971) wherein the court stated:

> In order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the tariff provision and compare it with the merchandise at issue.

Webster's Third New International Dictionary of the English Language, p. 2205 (1966) defines a "spoon" as:

> [A] usu. metal, plastic, or wooden eating or cooking implement consisting of a small oval or round shallow bowl with a handle—often used in combination [e.g., teaspoon]

and *Funk & Wagnalls New Standard Dictionary of the English Language*, p. 2349 (1956) defines the term "spoon" as:

> A utensil having a shallow ovoid bowl and a handle, used in preparing, serving, or eating food.

As employed in item 650.56, the term "spoons" is qualified, among other things, by the phrase "which are kitchen or table ware". *Webster's Third New International Dictionary of the English Language*, p. 1247 (1966) defines "kitchenware" as "hardware (as cultery and cooking utensils) for kitchen use." And in view of the admissions made by the parties as framed by paragraphs 10 through 13 of the complaint, it is clear that the imported merchandise comes within the ambit of the common meaning of the terms "spoon" and "kitchenware". The imported merchandise, as exemplified by exhibit 1, has a shallow bowl and a handle, and is used in the kitchen in cooking or preparing food.

The common meaning of the term "spoon" is palpably broad, encompassing many articles whose identification as such is invariably qualified by reference to some specific function performed. Thus, a teaspoon is so named because it is used to stir sugar in tea. The same can be said with respect to *slotted* spoons, *mixing* spoons, *stirring* spoons, *mustard* spoons, *table*-spoons, *dessert* spoons, *grapefruit* spoons, *fruit* spoons, *sugar* spoons, *relish* spoons, *soup* spoons, *serving* spoons, *salad* spoons. And by the same token *measuring* spoons are so named because of their specific function of apportioning exact quantities. In fact, a mere reference to the term "spoon" without a prefix denoting function is meaningless in terms of identifying any particular kind of spoon. Obviously, therefore, variation in function between spoons cannot be the basis for denominating one article a spoon and another not a spoon, as plaintiff seem inclined to do.

It is noted that one lexicon to which the court's attention has been called expressly includes *measuring* spoon in its definition of the term "spoon". See 25 *Encyclopedia Americana* 528 (1973) wherein a spoon is defined as:

> [A]n implement consisting of a shallow bowl and a handle, used chiefly for handling food. It may also be used ceremonially or for for *measuring*. [Emphasis added.]

Hence, a measuring spoon does not become "more than" a spoon merely because it differs from some other variety of spoon with which it may be compared. And since the measuring spoons at bar are within the common meaning of the term "spoon", and are admittedly kitchenware, it follows that plaintiff has failed to rebut the presumption of correctness attaching to the classification of the imported articles under the provision for spoons which are kitchenware in item 650.56.

In view of this conclusion the court does not reach plaintiff's claim for classification of the merchandise under item 651.47—a classification provision which is at best *residual*.

Protest No. 28091–001569 is served, and dismissed for untimeliness.

The action is dismissed. Judgment will be entered herein accordingly.

Decisions of the United States Customs Court

Custom Rules Decision

(C.R.D. 78–13)

SCM CORPORATION *v.* UNITED STATES (Brother International Corporation, PARTY-IN-INTEREST)

International Trade Commission—
Antidumping Act—Determination of Injury

Court No. 77–4–00553
(Dated August 9, 1978)

Stewart & Ikenson (*Frederick L. Ikenson* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*David M. Cohen*, Chief, Customs Section, and *Glenn E. Harris*, trial attorney), for the defendant.

Tanaka, Walders & Ritger (*H. William Tanaka*, *Lawrence R. Walders* and *Wesley K. Caine* of counsel) for the party-in-interest.

RE, Chief Judge: This is an action by an American manufacturer brought pursuant to section 516(c) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516(c) (Supp. V 1975). Plaintiff, SCM Corporation, seeks to review the failure of the Secretary of the Treasury to assess dumping duties upon the importation from Japan of portable electric typewriters.

Specifically, plaintiff challenges the United States International Trade Commission's (ITC) determination in its Investigation AA1921–145, that an industry in the United States was not being or likely to be injured, or prevented from being established, by reason of portable electric typewriters from Japan sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended, 19 U.S.C. § 160 et seq. (1970 & Supp. V 1975). This negative injury determination is the subject of this litigation. See *SCM Corporation* v. *United States* (*Brother International Corporation, Party-in-Interest*), 80 Cust. Ct. —, C.R.D. 78–2, 450 F. Supp. 1178 (1978), which denied plaintiff's motion to dismiss for lack of subject matter jurisdiction.

The action is presently before this court on (1) the plaintiff's motion to compel discovery, and production of documents and things which comprise the entire record made before the ITC in the antidumping investigation; (2) the defendant's cross-motion for a protective order, and to be relieved from responding to plaintiff's discovery and motion to produce; and (3) the party in interest's cross-motion for a protective order.

Plaintiff initiated its discovery by serving on the defendant and the party in interest, interrogatories and a request to identify and produce all documents and things which comprise the entire record made before the Commission.

Defendant responded to plaintiff's discovery by categorizing and identifying all of the documents and things it claimed were in the files of the Commission, or individual Commissioner, at the time of the injury determination. It did not produce any of the requested items, but stated specific reasons for not producing them. Defendant also identified six groups of documents or things, three of which the plaintiff does not contest the failure to produce. Plaintiff nevertheless demands all other documents identified in defendant's response, as well as all documents which are part of the record of the Commission.

In its initial response, the defendant disclaimed the term "record" as applied to the ITC investigation, but later amended its response by producing a copy of the notice of investigation and hearing issued March 28, 1975; a copy of the notice of investigation and hearing of March 28, 1975 as published in the Federal Register on April 3, 1975 (40 Fed. Reg. 15013); and a determination of no injury or likelihood of injury in Investigation AA1921–145 under the Antidumping Act of 1921, as amended, USITC publication 732 dated June 19, 1975; and the determination and statement of reasons as published in the Federal Register (40 Fed. Reg. 27079).

In sum, the defendant's refusal to produce certain documents and request for protective order is based upon the belief that the requested materials are not relevant for the purpose of judicial review, and that the information was given to the ITC in confidence and upon the assumption that the confidence would be preserved.

Thus, the parties present several issues with respect to the permissible scope of discovery of materials submitted to the ITC, the extent to which those materials may be subjected to a protective order, and the scope of judicial review of the administrative action. In similar cases, *Pasco Terminals, Inc.* v. *United States*, 80 Cust. Ct.—, C.R.D. 78–3 (1978) and *Armstrong Bros. Tool Co. et al.* v. *United States* (*Daido Corporation, Steelcraft Tools Division, Party-in-*

Interest), 80 Cust. Ct.—, C.R.D. 78–5 (1978), this court ordered that ITC submit a certified copy of the transcript of proceedings, exhibits introduced before the Commission, certified copies of written submissions, questionnaires, reports, and all other documents and things in the file of the Commission relating to the investigation. It also ordered that a motion for a protective order respecting any documents or things that were submitted to the Commission on a confidential basis, or otherwise privileged, would be considered after receipt of the materials in court. As stated in the *Pasco Terminals* case, the basis of the order is "to enable the court to determine whether or not the Commission's finding of injury was, among other things, arbitrary, an abuse of discretion, or otherwise contrary to law." See 5 U.S.C. § 706 (2)(A)(1976). See also *Camp* v. *Pitts*, 411 U.S. 138 (1973); *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402 (1971); *Imbert Imports, Inc.* v. *United States*, 60 CCPA 123, 475 F. 2d 1189 (1973); *Suwannee Steamship Company* v. *United States*, 79 Cust. Ct 19, 435 F. Supp. 389 (1977), and cases cited therein. Ct. *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975). See also questions and answers attached to the letter of Chairman Daniel Minchew, United States International Trade Commission, November 16, 1977, reproduced in *Hearing Before the Subcommittee on Trade, House Committee on Ways and Means, on the Adequacy and the Administration of the Antidumping Act of 1921* (95th Cong., 1st Sess. 1977) pp. 56–66.

In view of the foregoing, and upon consideration of all other proceedings herein, it is hereby

ORDERED that plaintiff's motion be denied, and that the Secretary of the United States International Trade Commission, Mr. Kenneth R. Mason, shall prepare and transmit to Mr. Joseph E. Lombardi, Clerk of the United States Customs Court, on or before September 15, 1978, the following:

(1) A certified copy of the transcript of proceedings and all exhibits introduced before the Commission in its Investigation AA1921–145;

(2) Certified copies of all written submissions, questionnaires, reports and all other documents which relate to Investigation AA1921–145;

(3) All other things in the files of the Commission relating to the investigation. *Pasco Terminals, Inc.* v. *United States, supra; Armstrong Bros. Tool Co. et al.* v. *United States* (*Daido Corporation, Steelcraft Tools Division, Party-in-Interest*), *supra*, and it is further,

ORDERED that the defendant's and the party in interest's cross-motions for protective orders shall be denied without prejudice subject to renewal as to any documents or things that were received by the Commission on a confidential basis, or that are otherwise privileged.

Judgment of the United States Customs Court in Appealed Case

AUGUST 8, 1978

APPEAL 77–20.—United States *v.* The De Laval Separator Company.—ON-FARM BULK MILK TANKS—REFRIGERATORS AND REFRIGERATING EQUIPMENT—AGRICULTURAL EQUIPMENT—TSUS.—C.D. 4693 reversed February 16, 1978 (C.A.D. 1204), rehearing denied April 27, 1978.

Decision on Petition for Rehearing Before the United States Court of Customs and Patent Appeals

AUGUST 10, 1978

APPEAL 77–23.—Kurt Orban Co., Inc. *v.* United States.—STEEL BARS, REAPPRAISEMENT OF—EXPORT VALUE—SEPARABILITY OF APPRAISEMENT.—C.D. 4697 reversed June 6, 1978 (C.A.D. 1209). Petition filed by appellee on July 14, 1978 denied.

Index

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